

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Ognjen Zivojnovic (Bar No. 307801)

2 ogizivojnovic@quinnemanuel.com

3 50 California Street, 22nd Floor

San Francisco, California 94111-4788

4 Telephone: (415) 875-6600

Facsimile: (415) 875-6700

5 Michael D. Bonanno (*pro hac vice* forthcoming)

mikebonanno@quinnemanuel.com

6 1300 I Street NW, Suite 900

7 Washington, D.C. 20005

Telephone: (202) 538-8000

8 Facsimile: (202) 538-8100

9 *Attorneys for NVIDIA Corporation*

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 vs.

17 MICROSOFT CORP.

18 and

19 ACTIVISION BLIZZARD, INC.,

20 Defendants.
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CASE NO. 3:23-cv-2880

**DECLARATION OF AASHISH PATEL IN
SUPPORT OF NVIDIA CORPORATION'S
STATEMENT IN SUPPORT OF SEALING
PORTIONS OF EVIDENTIARY
HEARING EXHIBITS**

The Honorable Jacqueline Scott Corley

Declaration of Aashish Patel

I, Aashish Patel, declare as follows:

1. I am Senior Director, GeForce NOW, NVIDIA Corporation (“NVIDIA”) and work on the GeForce NOW business, including analytics and capacity. I have knowledge of the facts set forth in this declaration.

2. Pursuant to Local Rule 79-5, I submit this declaration in support of NVIDIA’s Statement in Support of Sealing Portions of Evidentiary Hearing Exhibits.

3. PX3157, which is the same as RX2137, contains emails between NVIDIA employees and Microsoft employees regarding talking points for a European Commission (“EC”) hearing. The EC hearing where these statements were made was a closed proceeding, and NVIDIA does not have permission from the EC to publicly disclose information from the hearing.

4. PX3235 is a nonpublic version of a Newzoo report. NVIDIA does not have Newzoo’s permission to share this report publicly.

5. PX3052 is an internal NVIDIA presentation entitled “GFN Key Metrics Apr-2022.” This presentation contains non-public information regarding NVIDIA’s cloud gaming service, GeForce NOW, including: data regarding members and users, data regarding subscriptions, information regarding pricing and revenues, and information regarding service quality and capacity.

6. PX3069 is an internal NVIDIA presentation entitled “GFN Review January 8, 2021.” This presentation contains non-public information regarding NVIDIA’s cloud gaming service, including data regarding subscribers, pricing plans/strategy, and capacity plans/strategy.

7. PX3103 is a transcript regarding a meeting between the Competition and Markets Authority (“CMA”) and NVIDIA on January 9, 2023. The transcript is a confidential CMA document that cannot be publicly disclosed without permission from the CMA, and NVIDIA does not have permission from the CMA.

8. PX3104, which is the same as RX2135, is an email from NVIDIA’s outside counsel to the EC and two email attachments. NVIDIA seeks to seal content on the following pages of the first email attachment: Pages -281, -283, -287, -288, -289, -290, -291, -292, -293, -294, and -295. As reflected in Exhibit 1, attached hereto, the parts that NVIDIA seeks to seal contain non-public

1 information regarding NVIDIA's cloud gaming service, including: revenue forecasts, user forecasts,
2 consumer feedback and reactions, and NVIDIA's business negotiations with game publishers.

3 9. PX3113 is an email exchange between NVIDIA employees regarding NVIDIA's
4 negotiations with a game publisher to make certain games available through GeForce NOW. This
5 email exchange reveals NVIDIA's internal business strategy.

6 10. PX3117 is an email exchange between NVIDIA employees regarding NVIDIA's
7 negotiations with a game publisher to make certain games available through GeForce NOW. This
8 email exchange reveals NVIDIA's internal business strategy.

9 11. PX3123, which is the same as RX2143, is an email exchange between NVIDIA
10 employees regarding NVIDIA's negotiations with a game publisher to make certain games available
11 through GeForce NOW. This email exchange reveals NVIDIA's internal business strategy.

12 12. PX3144 is an internal NVIDIA presentation entitled "GFN Business Review –
13 November 2022." This presentation contains non-public information regarding NVIDIA's cloud
14 gaming service, including: key business metrics and future strategy, subscription model summary,
15 deployment schedule, subscription revenues and forecasts, pricing strategy, and strategy regarding
16 NVIDIA's graphics delivery network ("GDN") customers.

17 13. PX3153 is an email between NVIDIA employees regarding NVIDIA's negotiation
18 of a license agreement. This license agreement is non-public.

19 14. PX3243 is an internal NVIDIA presentation entitled "GFN Key Metrics May-2022."
20 This presentation contains non-public information regarding NVIDIA's cloud gaming service,
21 including: data regarding registrations, users, members, and subscriptions; data regarding pricing
22 and revenues; information regarding service quality; information regarding capacity; and
23 information regarding product plans.

24 15. PX7060 is the deposition transcript of one NVIDIA executive taken during the FTC's
25 investigation of Microsoft's acquisition of Activision. As reflected in Exhibit 2, attached hereto,
26 NVIDIA seeks to seal the following portions of the transcript: 28:15 – 18; 30:7 – 11; 33:4 – 7; 33:13
27 – 34:8; 39:23 – 39:24; 41:14 – 18; 43:5 – 44:14; 44:21 – 45:9; 48:5 – 48:23; 49:11 – 53:18 – 54:8;
28 54:11 – 54:12; 54:20 – 57:1; 59:14 – 19; 59:21 – 61:6; 61:19 – 63:5; 63:11 – 22; 64:5 – 64:16; 65:6

1 – 67:21; 68:20 – 69:11; 70:4; 70:18 – 71:1; 71:14 – 15; 73:5 – 73:17; 74:16 – 74:18; 75:2 – 75:22;
2 77:9 – 89:9; 90:22 – 93:20; 93:24 – 94:17; 94:20 – 95:7; 95:12 – 13; 96:11 – 13; 96:19 – 20; 97:6 –
3 11; 98:2 – 6; 98:15; 99:1 – 4; 99:10 – 12; 99:18 – 21; 102:2; 102:4 – 112:13; 113:7 – 9; 113:17;
4 114:2 – 3; 114:5 – 114:17; 114:23; 115:1 – 115:13; 115:21 – 116:4; 116:24 – 118:3; 118:21 –
5 119:19; 120:1 – 120:2; 120:17 – 24; 121:6 – 122:15; 122:20 – 21; 122: 23-24; 122:25 – 124:3; 124:5
6 – 129:8; 129:11 – 132:1; 132:10; 133:1 – 133:6; 133:14 – 15; 133:18 – 134:21; 135:1 – 5; 135:12 –
7 138:16; 139:2 – 4; 139:14 – 146:15; 148:15; 149:1 – 7; 149:17 – 159:5; 159:12 – 160:9; 160:24 –
8 161:5; 161:21 – 163:13; 165:15 – 167:8; 168:1 – 169:7; 169:17 – 170:20; 171:13 – 172:10; 172:20
9 – 173:1; 173:8 – 174:1; 174:22 – 177:18; 178:2 – 180:11; 180:25 – 186:7; 186:24 – 188:18; 189:4
10 – 191:13; 193:14; 193:17; 193:24; 194:2 – 7; 194:9 – 11; 194:17; 194:23; 195:4 – 9; 195:16 – 197:1;
11 197:6 -7; 197:10; 199:5 – 13. These parts of the transcript contain non-public information
12 concerning NVIDIA’s cloud gaming service, including financial data, internal pricing strategy,
13 business negotiations between NVIDIA and game publishers, terms of NVIDIA’s licensing
14 agreements, contract negotiations between NVIDIA and Microsoft, business decisionmaking and
15 strategy regarding NVIDIA’s service, and consumer feedback. NVIDIA also seeks to seal 12:15
16 of the transcript, which references personal information about the deponent’s location.

17 16. PX8000 is a declaration submitted to the FTC by the same NVIDIA executive during
18 the FTC’s investigation of Microsoft’s acquisition of Activision. As reflected in Exhibit 3, attached
19 hereto, NVIDIA seeks to seal the following portions of this declaration: Paragraph 22, Lines 19–20;
20 Paragraphs 23–27, 32–33; Paragraphs 42–49; Paragraphs 59–61; Paragraphs 70, Portions of Lines
21 8–14; and Paragraph 71. The parts of the document that NVIDIA seeks to seal describe the
22 performance and capabilities of NVIDIA’s cloud gaming service, subscriber data regarding
23 NVIDIA’s cloud gaming service, discussions with potential business partners, and financial
24 information regarding NVIDIA’s cloud gaming service. Information regarding plans for launching
25 games on GeForce NOW, NVIDIA’s cloud-gaming service, are shared with publishers and partners,
26 but only under non-disclosure agreements. The rest of this information is not available outside of
27 NVIDIA.

28 17. PX7062 is the deposition transcript of a second NVIDIA executive taken during the

1 FTC's investigation of Microsoft's acquisition of Activision. As reflected in Exhibit 4, attached
2 hereto, NVIDIA seeks to seal the following portion of the transcript: 26:1 – 14; 33:6 – 21; 34:19 –
3 35:18; 38:8 – 24; 40:5 – 9; 40:25 – 41:7; 61:19 – 62:1; 65:5 – 66:8; 69:9 – 71:6; 71:24 – 75:20;
4 76:22 – 89:15; 89:21 – 92:2; 100:18 – 101:10; 103:9 – 10; 104:4; 104:12 – 13; 104:17 – 115:3;
5 116:15 – 117:21; 121:19 – 122:13; 127:8; 130:1 – 133:20; 140:1 – 141:4; 142:6 – 145:17; 147:6 –
6 148:8; 148:18 – 149:13; 150:5 – 154:3.. These parts of the transcript contain non-public information
7 concerning NVIDIA's cloud gaming service, including financial data, internal pricing strategy,
8 business negotiations between NVIDIA and game publishers, terms of NVIDIA's licensing
9 agreements, contract negotiations between NVIDIA and Microsoft, business decisionmaking and
10 strategy regarding NVIDIA's service, and consumer feedback. NVIDIA also seeks to seal 12:19 of
11 the transcript, which references personal information about the location of the deponent's home.

12 18. RX2003 is an internal NVIDIA presentation entitled "GeForce NOW KPIs." This
13 presentation contains non-public information regarding NVIDIA's cloud gaming service, including:
14 data regarding registrations, users, and utilization; information capacity; and information regarding
15 the performance of certain titles and the anticipated release of additional titles.

16 19. RX2139 is an internal NVIDIA presentation entitled "GFN July KPIs." This
17 presentation contains non-public information regarding NVIDIA's cloud gaming service, including:
18 data regarding registrations, users, and utilization; information regarding the performance of
19 NVIDIA's service; information regarding capacity; and information regarding the anticipated
20 release of new titles; and strategy regarding the growth of NVIDIA's service.

21 20. RX2004 is an internal NVIDIA presentation entitled "GeForce NOW November
22 KPIs." This presentation contains non-public information regarding NVIDIA's cloud gaming
23 service, including: data regarding registrations, users, and utilization; user feedback; information
24 regarding the performance of NVIDIA's service; and information regarding capacity.

25 21. RX2151 is an email exchange between NVIDIA employees regarding NVIDIA's
26 negotiations with a game publisher to make certain games available through GeForce NOW. This
27 email exchange reveals NVIDIA's internal business strategy.

28 22. RX2153 is an email exchange between NVIDIA employees regarding NVIDIA's

1 negotiations with a game publisher to make certain games available through GeForce NOW. This
2 email exchange reveals NVIDIA's internal business strategy.

3 23. RX2150 is an email exchange between NVIDIA employees regarding a competitive
4 analysis of xCloud and GeForce NOW. As reflected in Exhibit 5, attached hereto, NVIDIA seeks
5 to seal portions of the May 24, 2021 9:33 AM email and the May 24, 2021 8:57 PM email. These
6 emails contain a discussion of the functions and performance of NVIDIA's service, which is
7 information that NVIDIA does not disclose publicly.

8 24. RX2145 is an email exchange between NVIDIA employees containing a game
9 content management update and discussion. The email exchange contains nonpublic information
10 about the performance and function of NVIDIA's cloud gaming service and internal decisionmaking
11 regarding NVIDIA's negotiations with a game publisher.

12 25. RX2152 is an email exchange between Microsoft employees and NVIDIA
13 employees regarding contract negotiations between the two companies.

14 26. RX2149 is an email exchange between NVIDIA employees containing a GeForce
15 NOW business update. This email exchange contains nonpublic information about NVIDIA's
16 business negotiations with game publishers and internal business strategy regarding NVIDIA's
17 cloud game service.

18 27. RX2147 is an email exchange between NVIDIA employees containing an update
19 regarding partner engagement for GeForce NOW. This email exchange contains nonpublic
20 information about NVIDIA's business negotiations with game publishers, NVIDIA's internal
21 business discussion regarding competitors of its cloud gaming service, and internal business strategy
22 regarding NVIDIA's cloud game service.

23 28. RX2146 is an email exchange between NVIDIA employees that contains nonpublic
24 information regarding NVIDIA's cloud gaming service, including: the performance, function, and
25 quality of NVIDIA's service; an analysis of NVIDIA's service and a competitor's service; and
26 business decisionmaking regarding the growth of NVIDIA's service.

27 29. RX2142 is an email between NVIDIA employees regarding NVIDIA's negotiations
28 with a game publisher concerning the availability of certain games through GeForce NOW. This

1 email exchange reveals NVIDIA's internal business strategy.

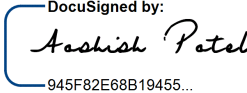
2 30. RX2141 is an email exchange between NVIDIA employees and Microsoft
3 employees. As reflected in Exhibit 6, attached hereto, NVIDIA seeks to seal the emails sent on
4 December 12, 2022 at 7:54 AM and December 30, 2022 at 1:18 PM because these emails contain
5 contract negotiations between the two companies.

6 31. Information about NVIDIA's subscribers, pricing strategy, product planning, costs,
7 business negotiations, license agreement terms, and product and service functions and capabilities
8 is highly confidential. NVIDIA keeps this information secret. Information about server costs and
9 capacity, pricing plans and strategies, and statistics regarding GeForce NOW users are not shared
10 outside of NVIDIA. Information regarding plans for launching games on GeForce NOW may be
11 shared with publishers and other business partners, but only under non-disclosure agreements.

12 32. NVIDIA would be harmed by public disclosure of this highly confidential
13 information. The market for streaming video games is competitive and rapidly growing, with
14 several existing competitors and many potential participants. Both current and potential competitors
15 could use the highly confidential information, which reveals NVIDIA's business performance,
16 pricing strategy, product planning, business decision-making, and financial data, to gain an unfair
17 advantage in the marketplace.

18 33. I declare under penalty of perjury under the laws of the United States of America that
19 the foregoing is true and correct and that this declaration was executed on June 21, 2023 in San
20 Francisco, California.

21 DATED: June 21, 2023

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24 By  945F82E68B19455...
AASHISH PATEL